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FACEBOOK, INC.

**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

SAMBREEL HOLDINGS LLC; YONTOO LLC;  
and THEME YOUR WORLD LLC,

Plaintiffs,

vs.

FACEBOOK, INC.,

Defendant.

CASE NO. 12-CV-00668-CAB-KSC

**DECLARATION OF JAMES F. BASILE  
IN SUPPORT OF DEFENDANT  
FACEBOOK, INC.'S EX PARTE  
APPLICATION FOR AN EXPEDITED  
RULE 16 SCHEDULING  
CONFERENCE AND AN ORDER FOR  
EXPEDITED BRIEFING AND  
DISCOVERY**

Judge: Hon. Cathy Ann Bencivengo

1 I, James F. Basile, declare:

2 1. I am an attorney licensed to practice law in the State of California and before this  
3 Court, and I am a partner with the law firm of Kirkland & Ellis LLP, attorneys of record for  
4 defendant Facebook, Inc. in the above-captioned matter. I have personal knowledge of the following  
5 facts and if called to testify as a witness would testify as follows:

6 2. On March 26, 2012, I conferred telephonically with Mr. Kotchen, counsel for the  
7 Plaintiffs, to discuss scheduling and discovery issues relating to Sambreel's preliminary injunction  
8 motion. During that conversation, among other topics discussed, I informed Mr. Kotchen that  
9 Facebook would file a motion to dismiss to address threshold legal issues and would agree to  
10 expedite briefing on its motion. I also informed counsel that we believed the Court should rule on  
11 Facebook's motion to dismiss before Facebook is required to file an opposition to Sambreel's  
12 preliminary injunction motion. Finally, I informed Mr. Kotchen that Facebook intended to pursue  
13 discovery to defend itself against Sambreel's preliminary injunction motion. Mr. Kotchen wanted to  
14 speak with his client and team before responding formally to our discussion.

15 3. Mr. Kotchen and I continued to negotiate through a series of email exchanges, which  
16 I have attached to this declaration.

17 4. Attached hereto as Exhibit A is a true and correct copy of a series of March 26, 2012  
18 email correspondence between Mr. Kotchen and myself.

19 5. Attached hereto as Exhibit B is a true and correct copy of my March 26 and March  
20 27, 2012 email correspondence with Mr. Kotchen.

21 6. Attached hereto as Exhibit C is a true and correct copy of my March 27, 2012 email  
22 correspondence to Mr. Kotchen, along with the attached draft proposed potential discovery topics  
23 that I included in my email.

24 7. Attached hereto as Exhibit D is a true and correct copy of my March 27 and March  
25 28, 2012 email correspondence with Mr. Kotchen.

26 8. In addition, my partner Elizabeth Deeley and I spoke telephonically with Mr. Kotchen  
27 and his colleague Robert Klinck on two occasions on March 28, 2012 to make a final attempt to  
28 negotiate a consensual briefing and discovery schedule. Among other topics discussed, I informed

1 Mr. Kotchen that Facebook had not been intentionally gating PageRage users since December 2011.  
 2 I also informed him that an immaterial number of PageRage users may be unintentionally gated  
 3 because they were the subject of previous detection due to malware mitigation. I also informed Mr.  
 4 Kotchen that Facebook was willing to agree in writing not to “gate” Facebook users who have  
 5 PageRage installed on their computers until an agreed-to preliminary injunction hearing date,  
 6 assuming that would move us toward agreement on a reasonable briefing and discovery schedule.  
 7 Mr. Kotchen rejected this proposal. Counsel for Sambreel was unwilling to identify any of the  
 8 proposed discovery that it would provide voluntarily and declined our invitation to suggest how  
 9 Facebook could narrow the scope of its proposed discovery to reach an agreement. Mr. Kotchen  
 10 also stated that Sambreel did not believe that any discovery or depositions were appropriate. I  
 11 notified Mr. Kotchen that Facebook would file this *ex parte* application to seek redress with the  
 12 Court and he agreed that the parties had satisfied their meet and confer obligations under this Court’s  
 13 rules. Mr. Kotchen informed me that Sambreel opposes the relief sought by this application.

14 9. Attached hereto as Exhibit E is Facebook’s initial proposed discovery.

15 10. Attached hereto as Exhibit F is a true and correct copy of the September 2, 2012  
 16 article “The Continued ‘MySpacing’ of Facebook: Banner Ads, Layouts and Sneaky Plugin Installs”  
 17 written by Mike Holder and accessible at [http://mikeholder.com/blog/the-continued-myspacing-of-](http://mikeholder.com/blog/the-continued-myspacing-of-facebook-banner-ads-layouts-and-sneaky-plugin-installs)  
 18 [facebook-banner-ads-layouts-and-sneaky-plugin-installs](http://mikeholder.com/blog/the-continued-myspacing-of-facebook-banner-ads-layouts-and-sneaky-plugin-installs) as of March 28, 2012.

19 11. Attached hereto as Exhibit G is a true and correct copy of the September 8, 2011  
 20 article “How to Remove In-Feed Facebook Ads Caused by Crapware [UPDATED]” written by  
 21 Whitson Gordon and accessible at [http://lifehacker.com/5838550/how-to-hide-facebooks-new-](http://lifehacker.com/5838550/how-to-hide-facebooks-new-in-feed-ads)  
 22 [in+feed-ads](http://lifehacker.com/5838550/how-to-hide-facebooks-new-in-feed-ads) as of March 28, 2012.

23 I declare, under the penalty of perjury under the laws of the United States, that the foregoing  
 24 is a true and correct to the best of my knowledge.

25 Executed this 28th day of March 2012, at San Francisco, California.

26  
 27 s/ James F. Basile  
 James F. Basile

SAMBREEL HOLDINGS LLC et al v. FACEBOOK, INC

United States District Court for the Southern District of California

Case No. 12-cv-00668-CAB (KSC)

Index to Exhibits to the March 28, 2012 Declaration of James F. Basile

Exhibit	Description
A.	Email correspondence from March 26, 2012
B.	Email correspondence from March 26 and March 27, 2012
C.	Email correspondence from March 27, 2012
D.	Email correspondence from March 27 and March 28, 2012
E.	Facebook's proposed discovery
F.	Article: "The Continued 'MySpacing' of Facebook: Banner Ads, Layouts and Sneaky Plugin Installs"
G.	Article: "How to Remove In-Feed Facebook Ads Caused by Crapware [UPDATED]"

**CERTIFICATE OF SERVICE**

The undersigned hereby certify that all counsel of record who have consented to electronic service are being served with a copy of the **DECLARATION OF JAMES F. BASILE IN SUPPORT OF DEFENDANT FACEBOOK, INC.'S EX PARTE APPLICATION FOR AN EXPEDITED RULE 16 SCHEDULING CONFERENCE AND AN ORDER FOR EXPEDITED BRIEFING AND DISCOVERY** via the CM/ECF system on March 28, 2012.

DATED: March 28, 2012

By: s/ James F. Basile

James F. Basile